

REMARKS

Reconsideration of the subject application is respectfully requested. The Applicants express appreciation for the interview of July 21, 2010 at which discussion centered on better defining the variables of interest and the comparative functionality.

In the present amendment all claims are being cancelled and replaced with claims 21-35. In particular, claims 21-27 correspond to earlier claims 1-10 and claims 28-35 correspond to earlier claims 11-20.

Claims 1-2 and 5-20 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, claims 1 and 12, the only independent claims in the pending application, are being amended in part to better define the data being obtained and stored and the nature of the analysis. The term "ascertaining relationships and trends", specifically identified in the Office Action, has been replaced.

Claims 1-2 and 12-13 stand rejected (Office Action paragraphs 8-12) under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No.2003/0208465 to Yurko ("Yurko") in view of U.S. Patent No. 6,811,538 to Westbrook ("Westbrook"). In particular, the Examiner relies on Yurko for disclosing obtaining and storing data on a computer, displaying particular results, an adjustable time period, and ascertaining relationships. The Examiner next relies on Westbrook specifically for disclosing a relationship between BMI and certain physiological monitoring/therapeutic results. Claims 7-11 and 16-20 stand rejected (Office Action paragraphs 13-26) under 35 U.S.C. § 103(a) as being unpatentable over Yurko in view of Westbrook and the article

"Trends" (Cynthia L Leibson, David F Williamson, L Joseph Melton III, Pasquale J Palumbo, et al. "Temporal Trends in BMI Among Adults With Diabetes". Diabetes Care. Alexandria: Sep 2001, Vol. 24, Iss. 9; p.1584). Claims 5-11 and 14-20 stand rejected (Office Action paragraphs 27-30) under 35 U.S.C. § 103(a) as being unpatentable over Yurko in view of Westbrook and acknowledged prior art.

The present claims as amended are directed to a method and apparatus for determining the effectiveness of a patient's therapy for sleep disordered breathing by capturing data regarding the patient and the patient's breathing and therapy over time, and comparing those data to results relative to a plurality of other patients. The apparatus further includes the ability to provide a patient with a controlled airflow. The data are compared to determine the level of therapy success.

Yurko, the primary reference, is directed to something different. Yurko is concerned with "three basic sub-systems or categories, namely, input, modification and presentation." (Yurko ¶ 0030). With regard to Yurko's input, Yurko discloses obtaining patient and compliance data, which is calculated and potentially uploaded (see Yurko ¶ 0034). Yurko is not concerned with analyzing the data, collecting the specific types of data collected and analyzed in the present invention, or anything related to displaying data to depict a relationship between metrics. Also, Yurko is not concerned with comparing treatment results, nor does he disclose or suggest anything with respect to comparisons among different treatment approaches or comparisons of treatments between patients. Further, Yurko does not disclose or suggest any display or anything related to BMI.

Westbrook is relied upon for teaching a relationship between input data concerning BMI and input data from a physiological monitoring or therapeutic device such as CPAP as well as teaching that the analysis of such data is based on comparing the data against a sleep apnea database. However, the particular data obtained (including AI, and AHI) and comparisons made in the present invention are not disclosed or suggested in Westbrook. Also, the Examiner indicates that Westbrook teaches a comparison between data related to a patient and data related to at least one other patient. However, Westbrook merely teaches analysis using data collected through a questionnaire, not data of actual events, and does not teach analysis of directly-collected physiological data or analysis of the particular data collected in the present invention.

The "Trends" article is directed particularly to treatment of diabetic patients, which is something completely unrelated to the respiration therapy effectiveness of the present invention. Further, there is no suggestion in any of Yurko, Westbrook, or Trends to combine references.

The early passage to issue of the application is respectfully requested.

Respectfully submitted,
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